

NNH CV21-6119016 S

: SUPERIOR COURT

DANIEL GREER

: JUDICIAL DISTRICT OF

: NEW HAVEN

V.

: AT NEW HAVEN

STATE OF CONNECTICUT

: NOVEMBER 10, 2022

### MEMORANDUM OF DECISION

The Yeshiva of New Haven, Inc. (“Yeshiva”) was quite the den of iniquity in the opening years of the twenty-first century. The dean of the Yeshiva, Daniel Greer, has been duly convicted of four counts of risk of injury to “E,” a student of the Yeshiva. *State v. Greer*, 213 Conn. App. 757, *cert. denied*, 345 Conn. \_\_\_\_ (2022). Greer has additionally been ordered to pay \$21,749,041 in damages to E for his sexual abuse. *Mirlis v. Greer*, 952 F.3d 36 (2d Cir. 2020), *cert. denied*, 141 S.Ct. 1265 (2021). Beyond this, the evidence in the present case, establishes that, at the same time he was abusing E, Greer - a married man - was engaging in a long-term sexual relationship with the assistant dean of the Yeshiva- a relationship that had begun over a decade previously when the assistant dean had *himself* been a student at the Yeshiva. The evidence shows that E once received a failing grade in the First Book of Samuel. It would seem that the administration deserved a failing grade in the Ten Commandments.

Greer was convicted by a jury of four counts of risk of injury to a child in violation of Conn. Gen. Stat. § 53-21(a)(2) and was sentenced on December 2, 2019 by Alander, J. to a total effective sentence of 20 years, execution suspended after 12 years, followed by 10 years probation. An essential element of risk of injury is that the child be “under the age of sixteen years.” E was born on October 27, 1987 and turned sixteen on October 27, 2003. E

testified at trial that his sexual relationship with Greer began in 2002, when he was fourteen years old. *State v. Greer, supra*, 213 Conn. App., at 760. He also testified in a Federal diversity action for damages against Greer that Greer sexually abused him when he was between fourteen and seventeen years of age. *Mirlis v. Greer, supra*, 952 F.3d, at 40.

The Petition For New Trial now before the court was filed by Greer pursuant to Conn. Gen. Stat. § 52-270 and commenced by service of process on November 12, 2021. Although the essence of Greer's defense at his criminal trial was that E was not credible, implying that the alleged sexual acts did not occur, the argument made in the Petition is quite different. The Petition essentially concedes that at least some of the alleged sexual acts *did* occur, but that they occurred after E's 16<sup>th</sup> birthday on October 27, 2003.

The Petition was heard by the court on July 20 and September 23, 2022. Following post-trial briefing, the case was argued on November 9, 2022.

The evidence submitted to establish Greer's new proposition is the testimony of the afore-mentioned assistant dean, Aviad Hack. On October 29, 2021, Hack signed an affidavit stating that he had given a deposition in E's Federal action for damages but had subsequently evaded service of process in both the Federal action and the subsequent state court criminal trial. He further stated that, "to my knowledge, no acts of misconduct by Daniel Greer toward [E] occurred prior to [E's] 16<sup>th</sup> birthday. The first such act, to my memory, occurred in or about January 2004."

Hack's affidavit is cautiously worded - the phrases "to my knowledge" and "to my memory" allow for a great deal of wiggle room. The obvious question that arises is "How does he know?" His testimony on the stand failed to answer this question satisfactorily.

Hack admitted in his testimony that he had not been present during any sexual acts between Greer and E. He additionally admitted that he had not been present with E 24 hours a day, seven days a week during the time in question. It is clear that all manner of sexual misconduct could have occurred between Greer and E prior to E's 16<sup>th</sup> birthday that Hack simply would not have observed or known of.

Hack's "knowledge" turns out to be a series of inferences, some of them quite thin. He reasoned that since Greer had not sexually abused him prior to his sixteenth birthday, the same pattern would necessarily apply to E. On cross-examination, however, Hack admitted that Greer had "groomed" him prior to his sixteenth birthday. In addition, Greer first abused Hack in 1992, whereas E testified that Greer had first abused him in 2004, so it is not unreasonable to conclude that Greer's seduction timetable may have altered in the intervening twelve years.

Hack testified that one location at which he and Greer had (adult) sexual relations was 139 West Park. On one occasion, apparently in late fall 2003, Greer told Hack, "I was just here with [E]." (Hack responded that Greer had "two mistresses.") Assuming this to be true, this statement hardly establishes that Greer had been there with E for the first time, or even were that to be the case, that Greer and E had not previously engaged in sexual acts in a variety of other locations.

Hack's additional theory is that Greer could not have engaged in sexual acts with E prior to October 27, 2003, because Greer "detested" E until later in the academic year. The flaw in this theory is obvious. Greer's relationship with E was not a relationship based on love. It was a relationship based on predation. Greer may not have liked E but nevertheless found him to be a convenient object of sexual desire.

Hack additionally testified that E called him during the winter of 2020-21 and asked Hack whether he (E) was “really under sixteen at the time.” This purported statement does not amount to a retraction of E’s clear evidence in the criminal trial that E was indeed under the age of sixteen when he was sexually assaulted by Greer.

In addition to obvious logical issues with his theories, Hack turns out to have credibility issues as well. He admits that he repeatedly evaded service of process in both the Federal and State actions. His testimony that coming forth at this late date was the “right” thing to do rests uneasily with his deliberate failure to accept service of process on occasions when coming forth would have been yet more “right.”

Beyond this, on cross-examination, Hack admitted to a remarkable series of events. Sometime after the Federal court awarded E over \$21 million in damages against Greer for sexual abuse, Greer brought an action against Hack in a rabbinical court, called a Din Torah, alleging that Hack was liable to Greer for the full amount of the judgment. The last hearing in the rabbinical court was in the Summer of 2021. Although Hack’s testimony leaves the exact litigational details murky (no documents were produced), he and Greer reached a settlement in the fall of 2001 in which Hack agreed to sign an affidavit and appear in court to give his testimony in the present case.

“[T]o obtain a new trial on the basis of newly discovered evidence, the petitioner must establish that the newly proffered evidence (1) is actually newly discovered, (2) would be material in a new trial, (3) is not merely cumulative, and (4) would probably produce a different result in a new trial.” *Mitchell v. State*, 338 Conn. 66, 94, 257 A.3d 259 (2021). (Internal quotation marks and citations omitted.) Assuming, without deciding, that the first

Three factors have been established by the evidence in the present case, the fourth factor most assuredly has not.

To satisfy the fourth factor, Greer “must persuade the court that the new evidence he submits will *probably*, not merely possibly, result in a different verdict at a new trial.... It is not sufficient for him to bring in new evidence from which a jury *could* find him not guilty - it must be evidence which persuades the judge that a jury *would* find him not guilty.” *Mitchell v. State, supra*, 338 Conn., at 97. (Internal quotation marks and citations omitted; emphasis in original.)

After a careful consideration of all of the evidence, the court is not persuaded that a jury would find Greer not guilty after hearing the new evidence submitted in the present case. If anything, the new evidence, if submitted to a jury, would seal Greer’s doom.

It is one thing to claim, as Greer’s able counsel did in the original trial, that E’s testimony concerning Greer’s sexual abuse was not credible. The obvious implication of counsel’s argument was that the alleged acts of sexual abuse had not been proven. It is another thing to claim, as Hack testified in the present case, that the acts of sexual abuse *did* occur, but at a slightly later time.

Beyond this, if the jury were to hear that Greer had previously preyed upon Hack, “grooming” him prior to his sixteenth birthday, the likelihood of conviction would approach a near certainty. Defense attorneys ordinarily attempt to *exclude* evidence of previous sexual misconduct. It is the rare defense attorney who affirmatively attempts to *introduce* such evidence.

For all these reasons, it is exceedingly unlikely that Hack would even be called as a witness by the defense in a new trial. If anything, it is the State that would attempt to introduce such evidence.

For reasons set forth above, the court is not persuaded that a jury would find Greer not guilty if it heard the new evidence.

The Petition For New Trial is denied.

---

Jon C. Blue  
Judge Trial Referee  
Juris NO. 080110